



IN THE HIGH COURT OF MADHYA
PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE HIMANSHU JOSHI
ON THE 10th OF NOVEMBER, 2025

MISC. APPEAL No. 2469 of 2014

SMT. SITARANI

Versus

DAL SINGH AND OTHERS

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Appearance:

Shri Sandeep Koshta - Advocate for the appellant.

Shri Anuvad Shrivastava - Advocate for the respondents.
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ORDER

The instant appeal under Order 43 Rule 1 of Code of Civil Procedure, 1908 (hereinafter referred as 'CPC') has been filed challenging the order dated 20.01.2010 in M.J.C. No. 05/2009 whereby an application filed under order IX rule 13 has been dismissed on default by the learned 4th Additional District Judge, Damoh.

2. The concise account of the case are that Respondent No. 1/plaintiff filed a suit for possession of the land wherein the appellant/defendant submitted her written submission, however, due to some unforeseen reason, she remained absent in the court proceedings and thus an ex-parte judgment and decree was passed



against her. Challenging the said judgment and decree, the appellant filed an application under order IX rule 13 of CPC which got registered as M.J.C No. 05/2009. However, the said application got dismissed on default on 20.10.2010 on account of non presence of her counsel. Hence, this appeal.

3. Learned counsel for the appellant argued that the trial Court has wrongly exercised its discretion in rejecting the application in default. On account of absence of counsel for the either side, the trial could have issued notice in the interest of justice. The learned trial Court did not consider the reasons shown by the appellant in proper perspective.

4. On the other side, the counsel for the respondent opposes the submission made by appellant counsel supporting the impugned order.

5. Heard the submissions and perused the record.

6. On perusal of impugned award, this Court finds that the order which is under challenged is not a order passed in merits, albeit, the Court has dismissed the application filed under IX Rule 13 of CPC on default on account of non presence of counsel for either side.

7. The first and foremost which arises before this Court is as to whether an appeal under Order XLIII Rule 1 CPC lies against an



order dismissing an application under Order IX Rule 13 in default.

8 The co-ordinate Bench of this Court in the case of *Babulal and others Vs. Heera and Others passed in C.R. No. 292/2019* has held as under :-

10. In the case of *Jaswant Singh & others Vs. Parkash Kaur & Another (2018) 12 SCC 249*, the Supreme Court after taking into consideration the Explanation added to Section 141 CPC, has held as under:-

“58. There cannot be any dispute to the view taken by the different High Courts in various judgments as noticed above that an appeal is a substantive right and not a mere matter of procedure and unless the right to appeal is specifically conferred it cannot be inferred under Section 141 of the C.P.C. The present is not a case where we are reading the right of appeal from Section 141 CPC. Section 141 now expressly provides that Order IX is applicable to all proceedings in civil jurisdiction. When Order IX is made applicable to the proceedings in the nature of application seeking recall of the order dismissing the application under Order IX Rule 13 C.P.C. the order passed by the civil court rejecting such application is clearly referable to Order IX Rule 9 C.P.C. and an order which is clearly referable to Order IX Rule 9 C.P.C. shall also be appealable by virtue of Order XLIII Rule 1(c) C.P.C. Rejection of application for restoration which is referable to Order IX, we cannot refuse to treat an order rejecting application under Order IX Rule 9 C.P.C. for the purposes of Order XLIII Rule 1(c) C.P.C. The Full Bench judgment of Madhya Pradesh High Court in so far as it answered question No.1 as framed in paragraph 1 of the judgment lays down the correct law.



However, the view of the Full Bench that when application under Order IX Rule 9 C.P.C. for restoration of suit is rejected, the second application for restoration of the original application although falls under the purview of the Order IX Rule 9 C.P.C. read with Section 141, rejection of the application does not fall under Order XLIII Rule 1(c) C.P.C., to the above extent, the view of the Full Bench cannot be approved. When the second application as held by Full Bench falls under Order IX Rule 9 C.P.C., hence the right of appeal shall also accrue when such application is rejected. In view of the above discussion, we are of the considered opinion that the appeal filed by the appellants against order dated 23.12.2005 was clearly maintainable and the High Court erred in holding that such appeal was not maintainable.”

11. In the light of aforesaid legal position, there is no doubt that against dismissal of an application under Order 9 Rule 9 CPC, which was filed for restoration of MJC/application under Order 9 Rule 13 CPC, misc. appeal under Order 43 Rule 1(c) CPC is maintainable and learned appellate Court has committed illegality in holding it to be not maintainable. Impugned order further shows that before holding so, learned appellate Court did not spare any time even to peruse the provision contained in section 141 CPC.

9. On careful reading of the aforesaid pronouncement, an order dismissing an application for want of prosecution is not directly appealable before this Court. The proper remedy available to the aggrieved party is to seek restoration of the application before the same court by invoking Order IX Rule 4 CPC read with Section 151



CPC.

10. The present appeal has been preferred bypassing the appropriate remedy. Since the order impugned is purely procedural in nature, passed due to non-appearance of the applicant, and not an order deciding the rights of the parties under Order IX Rule 13 of CPC, the appeal is squarely barred, both on the language of the statute as well as on settled principles of law.

11. In view of the above discussion, this Court holds that the appeal is not maintainable and is hereby **dismissed**. The appellant is at liberty to move an appropriate application before the learned Trial Court seeking restoration of the application under Order IX Rule 13 of CPC, strictly in accordance with law.

(HIMANSHU JOSHI)
JUDGE

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